

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CANTOR, WILMER §
§
§ Civil Action No. 4:22-cv-2628
VS. § Jury Demanded
§
§
COST OF WISCONSIN INC §

DEFENDANT'S NOTICE OF REMOVAL

1. COMES NOW Defendant **Cost of Wisconsin Inc.** and pursuant to 28 U.S.C. §§ 1332, 1441(b) and 1446(a), file this Notice of Removal with respect to the above matter as follows:

I. COMMENCEMENT AND SERVICE

2. On June 30, 2022, a suit was commenced against Defendant Cost of Wisconsin Inc. in the 269th District Court of Harris County, Texas entitled *Wilmer Cantor, v. Cost of Wisconsin Inc. and A&A Custom Concrete, LLC*, Cause No. 2022-39417. *Exhibit 1*. This personal injury suit arises out of a fall from scaffold that occurred on April 20, 2022 in Harris County, Texas. *Id.*
3. Service of process was made upon Defendants on July 6, 2022. See *Exhibit 2*.
4. Defendants timely filed an answer in state court on August 4, 2022. See *Exhibit 3*.
5. This Notice of Removal is filed within thirty days of the receipt of service of process and is timely filed under 28 U.S.C. § 1446(b). This Notice of Removal is also filed within one year of the commencement of this action and is thus timely pursuant to 28 U.S.C. § 1446(c).

II. DIVERSITY OF CITIZENSHIP

6. This United States District Court has jurisdiction over this dispute pursuant to 28 U.S.C. §1332(a)(1) and (c) because it is between citizens of different states, and the claims asserted by Plaintiff involve an amount in controversy in excess of \$75,000.00, exclusive of interest and costs. See *Exhibit 1 ¶ 19*. As such, this Court has original jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(1) and (c). Therefore, removal is proper. See 28 U.S.C. §1441(a).
7. Plaintiff, at the time this action was commenced was a citizen of Harris County, State of Texas. See *Exhibit 1 ¶ 2*.
8. Defendant Cost of Wisconsin Inc. is a foreign corporation with its principal place of business in the State of Wisconsin.
9. Defendant is a citizen of the State of Wisconsin and is not a citizen of the State of Texas, wherein this action was brought.
10. Defendant A&A Custom Concrete, LLC, on information and belief, has not been properly joined and served at the time of the filing of this Notice of Removal.
11. Accordingly, complete diversity of citizenship between Plaintiff and all properly joined and served Defendants existed at the time the date of this Notice of Removal. *See Tex. Brine Co. v. AAA*, 955 F.3d 482 (5th Cir. 2020).

III. AMOUNT IN CONTROVERSY

12. Under established federal law, a case may be removed unless it "appear[s] to a legal certainty that the claim is really for less than the jurisdictional amount." *Marcel v. Pool Co.*, 5 F.3d 81 (5th Cir. 1993) (citing *St. Paul Met-clay Indemnity Co. v. Red Cab Co.*, 303 U.S. 282 (1938)); *Williams v. State Farm Mutual Automobile Ins. Co.*, 931 F. Supp.

469 (S.D. Tex. 1995); *Johnson v. Dillard Dept. Stores, Inc.*, 836 F. Supp. 390 (N.D. Tex. 1993). In assessing whether removal is proper, the Court must first determine whether it is facially apparent that the amount in controversy exceeds \$75,000.00. *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326 (5th Cir. 1995); *HWJ, Inc. v. Burlington Ins. Co.*, 926 F. Supp. 593 (E.D. Tex. 1996). The sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy. 28 U.S.C. §1446(c)(2); *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996).

13. This matter became removable immediately when Plaintiff filed his Original Petition seeking “monetary relief over \$200,000...” (*See Ex. I at ¶ 19.*)

IV. VENUE

14. Venue lies in the Southern District of Texas, Houston Division, pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because Plaintiff filed its state court action in this judicial district and division. (*See Ex. I.*)

V. CONSENT TO REMOVAL

12. There are no other properly joined and served Defendants to join in this Notice of Removal.

VI. NOTICE

13. Defendant shall give notice of its filing of this Notice of Removal to all parties of record pursuant to 28 U.S.C. § 1446(d). Defendant shall also file with the clerk of the state court, and shall serve upon Plaintiff’s counsel, a notice of the filing of this Notice of Removal.

VII. STATE COURT PLEADINGS

14. Copies of all state court pleadings and orders are attached to this Notice of Removal.

VIII. EXHIBITS TO NOTICE OF REMOVAL

15. The following documents are attached to this Notice:

| Exhibit | Document Name |
|----------------|---|
| 1. | Plaintiff's Wilmer Cantor's Original Petition |
| 2. | Citation - Cost of Wisconsin Inc.'s Return of Service |
| 3. | Defendant Cost of Wisconsin Inc.'s Original Answer |
| 4. | Index of Documents Filed with Notice of Removal |
| 5. | List of Counsel of Record |
| 6. | Civil Action Sheet |

IX. CONCLUSION

16. WHEREFORE, Defendant **Cost of Wisconsin Inc.**, respectfully request that this action now pending against it in the 269th Judicial District Court, Harris County, Texas, be removed to this Honorable Court for trial and determination of all issues.

DATED this 5th day of August, 2022.

Respectfully submitted,

BROTHERS, ALVARADO, PIAZZA & COZORT, P.C.

By: /s/ Matthew R. Maddox
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Attorneys for Defendant Cost of Wisconsin Inc.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served upon the following counsel of record in compliance with Rule 21a of the Texas Rules of Civil Procedure on this 05nd day of August 2022.

VIA EFILE/ESERVE

Attorney for Plaintiff, Wilmer Cantor

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By: /s/ Matthew R. Maddox
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